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5 **Honorable James L. Robart**
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11 **IN THE UNITED STATES DISTRICT COURT**
12 **WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

13 GAEA SINGER,)
14) No. 09-CV-1334 JLR
15 Plaintiff,)
16) DEFENDANT'S MOTION TO
17 v.) DISMISS PURSUANT TO
18) 12(b)(3)
19 PLOVIE LAW FIRM, P.S.,)
20) (Noted on Motion Calendar
Defendant.) Friday, December 11, 2009)
21 _____)

22 **I.**
23 **RELIEF REQUESTED**

24 Defendant requests dismissal pursuant to Fed. R. Civ. Pro. 12(b)(3), improper
25 venue, as Plaintiff specifically contracted to have any disputes heard in Snohomish
26 County District Court.
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DEFENDANT'S MOTION TO DISMISS - 1
(CASE NO. 09-cv-1334 JLR)

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Lynnwood, WA 98037
425-744-0411
425-771-3490 (Facsimile)

II. **UNDISPUTED FACTS**

U.S. Bank N.A. ("Bank") sued Ms. Singer in Snohomish County District Court, Everett Division, regarding a credit card obligation. Decl. of Counsel, Ex. 1. Defendant law firm represented the Bank. Ms. Singer disputed the claim and filed counterclaims as well. *Id.* The parties subsequently entered into a settlement agreement (Agreement) which resolved all claims and counterclaims. Plaintiff references this Agreement in her Complaint and relies on it for her claims against Defendant. Dkt. No. 1, pg. 3.

The Agreement provides, in pertinent part:

"The Everett Division of Snohomish District Court for Snohomish County, State of Washington, shall have jurisdiction to enforce this agreement should either party default in the execution of the duties and obligations set forth in this agreement."

Decl. of Counsel, Ex. 2.

III. ARGUMENT AND AUTHORITY

DEFENDANT'S MOTION TO DISMISS - 2
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1 MS. SINGER IS CONTRACTUALLY BOUND TO BRING HER
2 CLAIMS IN SNOHOMISH COUNTY DISTRICT COURT
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4 The forum selection clause in the Agreement requires that this action be
5 dismissed and Ms. Singer bring her dispute over the alleged breach of the Agreement
6 in the selected forum.
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8 A motion to enforce a forum selection clause is treated as a motion to dismiss
9 pursuant to Rule 12(b)(3); pleadings need not be accepted as true, and facts outside the
10 pleadings may be considered. *Argueta v. Banco Mexicano*, S.A., 87 F.3d 320, 324 (9th
11 Cir. 1996).

12 Federal law is applied to determine the enforceability of a forum selection
13 clause. *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 513 (9th Cir. 1988).
14 A forum selection clause is presumptively valid; the party seeking to avoid a forum
15 selection clause bears a "heavy burden" to establish a ground upon which the court will
16 conclude the clause is unenforceable. *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S.
17 1, 17 (1972). *See Spradlin v. Lear Siegler Mgmt. Servs. Co.*, 926 F.2d 865, 868 (9th
18 Cir. 1991) (holding that the *Bremen* framework applies to employment contracts even
19 when the controlling contract is not a complex commercial contract like the one in
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Bremen).

Because forum selection clauses are presumptively valid, they should be honored "absent some compelling and countervailing reason." *Bremen*, 407 U.S. at 12, 92 S.Ct. 1907. The party challenging the clause bears a "heavy burden of proof" and must "clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or over-reaching." *Id.* at 15, 92 S.Ct. 1907.

Here, the Agreement clearly provides that if any default occurs in the execution of duties and obligations, the Everett Division of Snohomish County District Court "shall have jurisdiction." Decl. of Counsel, Ex. 2.

Ms. Singer settled the underlying collection case knowing, and agreeing, that any dispute as to breach of the Agreement would be heard by Snohomish County. Her federal case should be dismissed.

DATED this 19th day of November, 2009.

LUKE, CASTEEL & OLSEN, PSC

/s/ Kimberlee Walker Olsen
Kimberlee Walker Olsen, WSBA #28773
Attorney for Defendant
kolsen@lukecasteel.com

DEFENDANT'S MOTION TO DISMISS - 4
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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2009, I electronically filed the foregoing motion as well as the Declaration in Support thereof and attached Proposed Order with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Jon N. Robbins at jrobbins@attorneysforconsumers.com.

/s/ Kimberlee Walker Olsen
Kimberlee Walker Olsen, WSBA #28773
Attorney for Defendant
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DEFENDANT'S MOTION TO DISMISS - 5
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